



## IFES Quarterly Report: April 1 – June 30, 2005

### Yemen: Election Systems Assistance

**USAID Grant No. DGC-A-00-01-00004-00 (1002-131)**

**Project period: January 10, 2005 – January 9, 2007**

**Total Budget: \$1,200,000.00 Expenses Recorded to Date: \$239,232**

### Background

In January 2005, IFES was awarded \$1.2 million for a two-year program entitled “Yemen: Elections Systems Assistance”. The award activities seek to target key deficiencies in Yemen’s electoral system that emerged during the 2003 parliamentary elections. Three of the activities laid out build upon IFES’ previous assistance to the SCER – election law reform, assistance in boundary delimitation, and the development of a training center for SCER staff and elections workers. The project also includes two new activities – a political party law reform component and an election dispute resolution initiative. These activities aim to prepare the country for its 2006 presidential and local council elections.

### Activities

- **Law Reform**

- *Election Law Reform*

In response to media inquiries that IFES/Yemen had been receiving about its project activities, particularly in reference to the law reform project, IFES decided to issue a press release in April 2005 to highlight IFES’ recommendations for election law reform in Yemen. The press release is attached here as Appendix A. Directly following the release, articles were published in numerous Yemeni newspapers, such as the *Yemen Times*, the *Yemen Observer*, *Al-Shoura* newspaper, and *Al-Sahwa* newspaper.

IFES wrote a report entitled *Electoral Law Reform in Yemen: Should a Place of Work be a Voting Domicile* in May 2005. This report came in response to a request from the SCER that IFES lead another public policy dialogue among the political parties represented in Parliament to further discuss and reach consensus on two issues covered in IFES’ ROL Phase II report. The SCER proclaimed that, after reviewing the recommendations for reform to the electoral law submitted by some political parties, it became apparent there are different views concerning two issues: (1) whether the place of work should be considered a voting domicile and (2) whether the requirement demanding an *amin/akel* or a judge to verify the endorsements from voters obtained by an applicant to be an independent candidate should be eliminated. The report has been translated and distributed, and is attached here as Appendix B. The report was discussed in a meeting on June 5<sup>th</sup>.

- *Political Party Law Reform*

IFES began the process of dialogue with stakeholders to identify areas in Yemen’s political party law that, if changed, would strengthen the electoral process in Yemen. The first round of political party law workshops and stakeholder consultations began in mid-April 2005.

In May, IFES completed its revision of the translation of Yemen's *Law Parties and Political Organizations Law No. (66) for 1991* and *By-Law Presidential Decree No. (109) 1995 pertaining to the Executive By-Law for the Parties and Political Organizations Law No. (66) for 1991* governing Parties and Political Organizations. This translation is attached here as Appendix C.

- **Election Dispute Resolution**

IFES has obtained and is in the process of translating copies of all guidebooks, manuals, procedures and forms used in 2003 to receive, record, and resolve election disputes.

- **Training Center Development**

At the time UNDP was planning its capacity-building training as part of Phase II of its Electoral Support for the SCER project, IFES had also been planning to conduct elections administration training for the SCER under its Yemen Elections Assistance project. UNDP was preparing to use the "Building Resources in Democracy, Governance and Elections" (BRIDGE) electoral administration course as the vehicle for enhancing the SCER's professional development; while IFES was intending to tailor its "Basic Election Administration Training" (BEAT) curriculum to the Yemeni context for use in training workshops for the SCER's core trainers on technical election topics. Both organizations acknowledged the need to collaborate in building the SCER's institutional capacity and to provide selected staff with the necessary skills and to enable them to respond to the complexity of the upcoming elections in Yemen. After a trip by IFES training expert Jim Heilman to Yemen in March 2005 and numerous discussions between UNDP and IFES, it was agreed upon in late April 2005 that the BRIDGE and BEAT modules should be harmonized in order to ensure the consistency of the training materials and to avoid any duplication of effort.

UNDP and IFES agreed to form a joint project in collaboration with the SCER Training Unit to develop a new SCER Professional Development Course (PDC) based on elements of both BEAT and BRIDGE courses. The advantages of such a joint project are the harmonization of BRIDGE and BEAT into one course that will be owned by the SCER, UNDP and IFES for future use and the pooling of resources for the management, development, and implementation of the course. The joint project will be funded by UNDP and IFES (using funds allocated for training center development under CEPPS). The first of the two planned trainings will take place in November 2005.

- **Boundary Delimitation**

IFES has continued to work with the SCER and donors on the implementation of GIS for boundary delimitation, to ensure that the SCER adopts an open and transparent delimitation process, and to provide technical assistance in the use of GIS.

- **Additional Technical Assistance**

The SCER called IFES to a meeting attended by the parliamentary parties to discuss their proposal to deploy voter registration committees at the parliamentary constituencies' level instead of local constituencies for the 2006 voters registration update and review process.

During this quarter, the SCER had been examining a number of issues relating to the local council elections to be held in September 2006, and asked IFES for advice on its options. IFES wrote a report in response to their request. The report, entitled “Report on the Electoral System and the Ballot Paper for the 2006 Local Council Elections”, was completed, translated and delivered to the SCER mid-June 2005, and it is attached here as Appendix D.

### **Activities Planned for the Next Quarter**

- **Law Reform**
  - A further meeting on voter domicile and IFES’ recommendations will be held next quarter.
  - IFES will meet with the Committee for the Affairs of Parties and Political Organisations (CAPPO) in Yemen in order to present the political party law reform project to the committee, after which it will prepare a list of issues and options for reform and prepare for its second round of stakeholder consultations, planned for July.
- **Election Dispute Resolution**
  - After IFES has completed the translation of the materials used in the 2003 elections to receive, record, and resolve disputes, it will prepare a description of the 2003 dispute procedures.
  - IFES will meet with the SCER and stakeholders to discuss the use and effectiveness of the 2003 procedures, and draft proposed election dispute resolution procedures. These procedures will be revised and a final report will be prepared in consultation with the SCER and UNDP.
- **Training Center Development**
  - IFES and UNDP will work to translate all course materials into Arabic and adapt them to the Yemeni context, subject to approval by the SCER.
  - A list of 30 participants selected from the upper and middle management of the SCER to attend both training workshops will be finalized.
  - Two experienced international facilitators will be selected to conduct each workshop assisted by SCER, IFES and UNDP staff.
- **Boundary Delimitation**
  - IFES plans to assist the SCER with protocols for an open and transparent delimitation process, including the provision of informational materials.

### **ATTACHMENTS**

1. Media Release April 19, 2005: IFES Report Recommends Changes to Yemen’s Election Law
2. Electoral Law Reform in Yemen - Should a place of work be a voting domicile
3. Law and By-Law Governing Parties and Political Organizations
4. Report on the electoral system and the ballot paper for the 2006 local council elections



## MEDIA RELEASE – FOR IMMEDIATE USE

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### IFES Report Recommends Changes to Yemen's Election Law

**SANA'A – April 19, 2005** – IFES-Yemen has submitted a report to the Supreme Commission for Elections and Referendum (SCER) recommending significant changes to Yemen's election law.

IFES-Yemen Country Director Dr. Paul Harris said that the country's 2003 parliamentary elections are recognized as a significant improvement on previous elections. However, they also suggested that amendments need to be made to the election law before the presidential and local council elections scheduled for 2006 and the parliamentary elections due in 2009. These amendments should improve the impartiality and transparency of the electoral process and deal with a number of omissions, procedural gaps and technical issues in the law.

The report is the result of a year-long process of consultations and discussions with the SCER, with representatives of 13 political parties and with local and domestic NGOs. This transparent, participatory approach to law reform helps strengthen democratic governance. IFES provided a neutral venue for group representatives to express concerns about necessary changes to the law and suggest improvements.

The report contains a total of 56 recommendations for amendments to the law or for action by the SCER. It covers the composition of election committees, voter registration, boundary delimitation, candidate nominations, voting and counting processes, election campaigns and finance, local council elections, and other matters. The report also contains a draft election law which incorporates the changes recommended in the report. The report is available in Arabic and English on the IFES website ([www.ifes.org](http://www.ifes.org)).

"It is now up to the SCER, the government and Parliament to consider the recommendations in the IFES report and the proposals submitted by political parties so that amendments to the law can be made well before next year's elections," Dr. Harris said.

He added that IFES has begun a new project to review Yemen's party law, using a similar process of consultation and dialogue with political parties and NGOs.

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*A summary of the IFES report and the main recommendations follows.*

*IFES is an international, non-profit organization that supports the building of democratic societies by providing expert technical assistance in all areas of democratization and civic education. IFES has worked in Yemen since 1993 and has had an office in Sana'a since 1999. IFES-Yemen is providing training and locally defined technical assistance to the Yemeni Supreme Commission for Elections and Referendum.*



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## **ELECTION LAW REFORM IN YEMEN: FINAL REPORT ON THE PUBLIC POLICY DIALOGUES, JANUARY 2004 – JANUARY 2005**

### **SUMMARY**

#### **OUTLINE OF THE PROJECT**

While the 2003 parliamentary elections in Yemen were generally well-conducted and a significant improvement on previous elections, they demonstrated that amendments needed to be made to the election law (General Elections and Referendum Law No. 13, 2001) to improve the impartiality and transparency of the electoral process and to deal with a number of omissions, procedural gaps and technical contradictions. These matters need to be addressed before the presidential and local council elections scheduled for 2006.

In January 2004, IFES completed an in-depth analysis of Yemen's election law, and identified five priority areas that needed addressing before the 2006 elections: the statutory voter registration update schedule, dispute resolution mechanisms, the ballot counting venue, the process for appointing members of election Sub-committees, and local council election procedures. With the funding support of The United States Agency for International Development (USAID), IFES then launched the first phase of a public policy dialogue through a series of meetings with a broad range of stakeholders (including political parties, local and international NGOs, and the Supreme Commission for Elections and Referendum (SCER)) to discuss options for reforming the election law in each of the five priority areas.

IFES' developmental approach to promoting election law reform in Yemen incorporates international norms and lessons learned from similar IFES projects in other countries. In Yemen, IFES implemented country-tailored approaches designed to:

1. Strengthen Yemen's election procedures by developing workable alternatives that take into account stakeholders' concerns and are consistent with international norms and standards.
2. Provide a neutral venue for stakeholders to express their concerns about practical operations in these areas and present their suggestions for improvements.
3. Generate stakeholder buy-in to transparent, participatory approaches to law reform as part of strengthening democratic governance.
4. Offer comparative examples of how specific areas of election law have been handled in other developing democracies.

IFES' report on Phase One of the election law reform dialogue was issued in August 2004. Phase Two took place between October 2004 and January 2005, with the funding support of the Middle East Partnership Initiative (MEPI), using the same consultative process with a broad range of stakeholders as in Phase One. The discussions in Phase Two concentrated on a number of election law reform matters that were not discussed in Phase One, although inevitably there was some overlap. IFES identified the matters for discussion in Phase Two in several ways: through analysis of the current election law, from the SCER's book on the 2003 election,<sup>1</sup> from international NGOs' reports on the 2003 election,<sup>2</sup> from stakeholders'

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<sup>1</sup> Republic of Yemen, Supreme Commission for Elections and Referendum, *2003 Parliamentary Elections. Documentation of Boundary Delimitation, Voter Registration and Election Results*, Sana'a, December 2004.

comments during Phase One of the project, and from discussions with participants in a recent IFES analysis of Yemen's electoral system.<sup>3</sup> Stakeholders were also encouraged to raise other issues.

The final report deals with the matters discussed in Phase Two and some of the outstanding matters from Phase One. It provides some background information and recommendations concerning matters discussed in Phase One, and then covers the issues and options discussed with stakeholders in Phase Two, summarizes the views of stakeholders, and outlines IFES' conclusions and recommendations for amendments to the election law or for action by the SCER. Annexes to the report list the recommendations, the participants in Phases One and Two of the public policy dialogue process, and provide a draft election law incorporating the amendments recommended in the report.

## **SUMMARY OF MAIN RECOMMENDATIONS**

The following is a summary of the main recommendations in IFES' final report, grouped by topic. The full report and the draft amendments to the election law should be consulted for the details.

### **Voter Registration and Election Committees**

- The Supreme Commission should determine and announce the selection criteria for chairs and members of voter registration and election committees for the 2006 elections as soon as practicable.
- The Supreme Commission should have flexibility to determine the committee structure for conducting local council elections simultaneously with presidential and parliamentary elections.
- Each Supervisory Committee should consist of a chair and four members, including at least two women from the governorate concerned. All chairs and all members of Supervisory Committees should be non-partisan.
- No Main Committee or Sub-committee should have a majority of members from one party or a majority of members from parties that are, in the opinion of the Supreme Commission, allied or aligned parties.
- The membership of each Main Committee should include at least one woman from the constituency concerned. When a woman member of a Main Committee is carrying out her duties as a member of the Committee, she may be accompanied by another woman or by a family member to act as a companion, provided that the companion must take no part in the proceedings of the Committee, must not influence the member of the Committee, and must not disclose any information he or she may acquire in carrying out the role of a companion.
- Before taking office, all chairmen and members of Supervisory Committees and voter registration and election committees should, in front of witnesses, have to read aloud and sign a statement promising to fulfill their duties impartially and in accordance with the policies and directions of the Supreme Commission.

### **Registration of Voters**

- A place of work should not be a voting domicile.

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<sup>2</sup> IFES, *IFES Yemen Post-Electoral Assessment*, May 2003; National Democratic Institute (NDI), *April 27, 2003 Parliamentary Elections In Yemen: Final Report*; United Nations Development Programme (UNDP), *Electoral Support Project for the Supreme Commission for Elections and Referenda of Yemen: Final Report*; UNDP, *Electoral Needs Assessment*, February 2004.

<sup>3</sup> IFES, MENA Strategy for Election Support, *Yemen: A Technical Analysis and Needs Assessment of the Electoral System*, September 2004.

- A voter should have to be notified (unless deceased) before his or her name can be deleted from the Voters List as a result of an application by another person or by the Supreme Commission.
- The right of challenge to the Voters List for a constituency should be limited to citizens residing in that constituency, and only the objector and the respondent should have the right of appeal.
- If the Supreme Commission has reason to believe a person whose name appears in a Voters List is not eligible to be registered or is registered in more than one constituency:
  - the Supreme Commission should be able, during the review and update period and the subsequent addition and deletion period, to request the Main Committee to delete the name of that person from the List;
  - after a Main Committee has dealt with applications for additions and deletions but before the Voters List becomes final, the Supreme Commission should be able to apply to a Court of First Instance for the deletion of the name of the voter, provided the Supreme Commission has notified the voter concerned (if not deceased) of the reasons for its belief and its intention to apply to the Court, and the Supreme Commission has publicly announced the names of the registered voters that it believes to be ineligible and that it intends to apply to the court for their removal from the List.
- Before Voters Lists become final, the SCER should have the power to correct errors in a Voters List, and to file a challenge in a Court of First Instance against any entry in a Voters List, provided it has previously notified the voter concerned of its intention to do so. Both the SCER and the voter concerned should have the right of appeal to a Court of Appeal for a final decision.
- Posting of Voters Lists in public places within the constituency:
  - the initial Voters Lists should be posted throughout the 30-day biennial review and pre-election update periods;
  - the corrected Voters Lists should be posted for 7 days after the review and pre-election update periods;
  - the final Voters Lists should be posted for 7 days.
- A political party should have the right to obtain from the Main Committee photocopies of any Voters List that is publicly displayed, at a uniform cost that is set by the Supreme Commission. The headquarters of a political party should have the right to obtain from the Supreme Commission in electronic form, a copy of any Voters List that is publicly displayed, with the uniform costs and technical specifications set by the Supreme Commission. A party or person who obtains a copy of a Voters List should be able to use it only for purposes relating to the registration of voters, or in connection with an election or referendum. It should be an offence to use a List or its information for other purposes, or to sell it, or to use it for commercial purposes, or to provide it to any unauthorized person.
- It should be an offence for a person to apply to register as a voter while knowing that he or she is not eligible for registration, and for anyone to assist the registration of another person while knowing that he or she is not eligible for registration.

### **Boundary Delimitation**

- The election law should state the general procedures for the boundary delimitation process, so that:
  - the boundaries of parliamentary constituencies and local electoral constituencies are revised after each population census, according to the usually-resident populations;
  - the Supreme Commission cannot consider political data when deciding constituency and district boundaries and cannot incorporate political data into a delimitation database;

- the Supreme Commission must publish its proposed boundaries for the constituencies within each governorate and give the specific reasons for them in terms of the statutory criteria. The Supreme Commission must then give political parties, local councils, and any other person or organization it considers appropriate, a reasonable opportunity to comment on the manner in which the proposed boundaries comply with the statutory criteria. The Supreme Commission must have to consider those comments before deciding the final boundaries, and must publish the final boundaries showing how they comply with the statutory criteria, and must prepare new Voters Lists according to the new boundaries;
- the new boundaries for parliamentary constituencies should come into force at the next general election for the House of Representatives, and the new boundaries for the local electoral constituencies should come into force at the next general election for the local councils.

### **Nomination of Candidates**

- Any registered voter in the constituency concerned should have the right to challenge a committee's decision to refuse or accept a nomination application, with the parties to the case then having the right to appeal the committee's decision to the Court of Appeal in the governorate.
- Where a committee refuses an application to be a candidate, it should have to provide the applicant with a written statement of the specific reasons for its decision.
- The candidate nomination period for parliamentary and local council elections should be reduced from 10 days to 7 days, with male Independent candidates being required to obtain 200 signatures from at least one-third of centers. A woman should not be required to obtain any signatures for nomination as an Independent candidate.
- There should be no requirement for an *amin/akel* or a judge to verify the endorsements from voters obtained by an applicant to be an Independent candidate. Instead the applicant should have to ensure and declare that each voter endorsing his or her candidacy has personally signed the form, with a false declaration resulting in refusal of his or her application and liability to prosecution.
- A political party should only be able to withdraw its endorsement of a candidate during the nomination period, and should then be able to endorse another candidate before the end of the nomination period. A candidate from whom a party withdraws its endorsement should be able to run as an Independent candidate after completing such nomination application procedures as the Supreme Commission requires in the period remaining before the close of nominations.
- The deadline for a person to withdraw his or her application to be a candidate should be 2 days after the end of the nomination period.
- The fee to be a candidate for election to the local council election of an administrative district should be half the fee to be a candidate at a parliamentary or governorate council election. The fee to be a candidate at a parliamentary or governorate council election should be increased to RY10,000. A candidate should have to deposit the nomination fee in cash into the relevant local council's bank account and include the receipt with their nomination application.
- The requirement that 'any public official in an administrative district' should have to resign 3 months before the opening of nominations in order to be eligible to be a candidate in a constituency in which he or she works should be removed. However the penalty for any public official convicted of coercion of voters or abuse of authority over voters should be a maximum of 2 years imprisonment and loss of office.
- If the preliminary list of candidates for a constituency contains fewer than two names, the nomination period should be extended by 2 days, with consequential reductions in the periods for filing and deciding challenges.
- A supplementary election should be held:

- if a candidate dies after the final list of candidates has been issued and before the close of voting on election day;
- if the final list of candidates for a constituency contains fewer than two names.
- If a candidate dies after the close of voting but before the final result is officially declared, the official count should be completed. If the deceased candidate obtained a relative majority of valid votes, the seat should be declared vacant and a by-election held.
- A person should not be able to be a candidate at the same election for more than one governorate council or for both a governorate council and the local council of an administrative district.

### **Voting and Counting Processes**

- Each male and female Sub-committee should count the votes it has issued.
- If a candidate fails to appoint a representative to a Main Committee or Sub-committee, or if an appointed representative does not attend, the committee should have to record that fact in its minutes and should then carry out its duties in his or her absence.
- If one member of a Main Committee or a Sub-committee is absent, the other two members should record that fact in the minutes and should then carry out the committee's duties in his or her absence.
- A committee member should have the right to refuse to sign the committee's minutes provided he or she enters a written statement of the specific reasons for refusal in the committee's records.
- Copies of the count or aggregation results and the minutes recording the final results should be given to candidates or their representatives and should be publicly displayed for 3 days at the location of the committee.
- If there is equality of votes, the Main Committee should, at a time set by the SCER and under its supervision and in the presence of candidates or their representatives, re-examine the validity of all the votes cast in the constituency and should then recount all the votes. Only if the votes are equal after the recount should the winning candidate be decided by lot.
- A voter should not have the right to vote at any center if a presidential election or a referendum is combined with parliamentary elections or with local council elections.

### **Election Campaigns and Finance**

- The Supreme Commission's instructions to the official media should include guidelines relating to coverage of the incumbent President's daily activities during the campaign period for a presidential election at which the President is a candidate.
- Donations to presidential candidates:
  - the term 'donation' should be defined to include cash and non-cash contributions;
  - an applicant to be a presidential candidate should be required to appoint a person to be responsible for receiving donations on behalf of the candidate, and for ensuring that proper and accurate records are kept of all donations received by or on behalf of the candidate, including the true name of each donor and the amount donated;
  - a person making a donation that exceeds YR10,000 should have to provide the person receiving the donation with the true name of the donor and the reasonable market value of any non-cash donation;
  - once a person is endorsed as a presidential candidate, the person appointed by the candidate should have to notify the Supreme Commission in writing within 48 hours of the true name of any donor who has previously made a single donation to the candidate that exceeds YR100,000 or whose total donations exceed YR200,000, and the amount donated;
  - during the period between endorsement of a presidential candidate by the House and the declaration of the final result of the presidential election, the person

appointed by the candidate should have to notify the Supreme Commission in writing within 48 hours of the true name of any donor who makes a single donation to the candidate that exceeds YR100,000 or whose total donations to the candidate exceed YR200,000 since the candidate announced his intention to run for the presidency, and the amount donated;

- when the Supreme Commission receives notifications of donations to presidential candidates, it should be required to publish the names of the donors and the amounts donated within 48 hours.
- it should be an offence to fail to comply with the law regarding donations to presidential candidates.
- By the end of 2007, and following consultations with political parties and other organizations it considers appropriate, the Supreme Commission should publish a report recommending whether campaign spending limits should be introduced for presidential, parliamentary or local council elections, and whether disclosure of donations should be introduced for parliamentary and/or local council candidates. If the Supreme Commission does recommend the introduction of campaign spending limits or disclosure of donations, the report should state the limits and disclosure levels that should apply and the mechanisms by which they would be enforced.

### **Other Matters Relating to the Election Law**

- The law should state that the Supreme Commission is the principal and independent adviser to the Government and the House of Representatives on electoral matters. Within 12 months after each general election and referendum, and following consultations with political parties and with any other organizations it considers appropriate, the Supreme Commission should be required to publish a report on the conduct of the election, including any changes it recommends to the law.
- The Supreme Commission should make it clear before each election and referendum that it will refer any person who violates the election law to the Office of Public Prosecutions.

### **Other Matters Relating to Local Council Elections**

- The Supreme Commission's manual for local council elections should include the procedures to be used for conducting the elections based on those required for parliamentary elections, with appropriate changes according to the different nature of local elections.
  - The Supreme Commission should consider decentralizing the printing of local council ballot papers, provided that political parties and NGOs are able to monitor the process.
  - The Supreme Commission should set the timetable for the different phases of the 2006 election to give it as much time as possible between the finalization of the lists of candidates and election day.
  - The Supreme Commission should discuss with the Ministry of Local Administration:
    - the issues concerning the number of local electoral constituencies required in administrative districts with small populations, including whether there should be an amendment to the Local Authority Law to have fewer than 18 elected members in those administrative districts;
    - whether the Local Authority Law should be amended so that a vacancy arising more than 12 months before the end of the council's term is filled by the highest polling unsuccessful candidate at the previous local council elections, with a by-election being held if that person does not accept the position.
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## ELECTORAL LAW REFORM IN YEMEN

### Should a place of work be a voting domicile?

#### 1. Introduction

In March 2005 IFES issued a report containing 56 recommendations for amendments to Yemen's election law and for action by the Supreme Commission for Elections and Referendum (SCER). The report addresses the composition of election committees, voter registration, boundary delimitation, candidate nominations, voting and counting processes, election campaigns and finance, local council elections, and other matters. This report was the result of a consultative process with a broad range of stakeholders including the SCER, government officials, political parties, civil society organizations and international NGOs working in Yemen.

After studying the IFES report and other proposals submitted to it by political parties, the SCER asked IFES to hold further consultations with the parties represented in Parliament on two of the recommendations in IFES' report:

- (1) that the place of work should not be a voting domicile (Recommendation 7);
- (2) that an *amin/akel* or a judge should not be required to verify the endorsements from voters obtained by an applicant to be an independent candidate (Recommendation 39).

On May 3, 2005 IFES held a roundtable discussion with political and legal officers from the General People's Congress (GPC), Yemen Congregation for Reform (Islah), Yemen Socialist Party (YSP) and Nasserite Unionist Political Party (NUPP). While the participants agreed that, under certain conditions, an *amin/akel* or a judge should not have to verify the endorsements from voters obtained by an applicant to be an independent candidate, no consensus was reached on whether a place of work should continue to be a voting domicile. The participants asked IFES to provide further information about other democracies' laws on voter registration domiciles and the registration entitlements of military personnel, for discussion at another roundtable.

This report responds to that request; unless stated otherwise, article references are to the General Elections and Referendum Law (No. 13) 2001. Once the consultations have been completed, IFES will prepare a full report for submission to stakeholders.

#### 2. Yemen's current law on voting domiciles

Except for naturalized citizens who have not completed the period specified in the Law since acquiring Yemeni citizenship (Article 3), those convicted of registering as a voter in more than one voting domicile (Article 135), and those denied voting rights under Article 101(2) of the Penal Code, every Yemeni citizen who is at least 18 years old is entitled to register as a voter.

A voter must register at his ‘voting domicile’, which Article 2(d) defines as ‘the usual place of residence of a person, or where he has his main place of work, or the residence of his family even if he does not reside in it’. If he has more than one domicile, he is required to choose the voting domicile where he wishes to exercise his electoral rights (Article 4(a)). No eligible citizen is allowed to register his name for more than one voting domicile.

The Voters List for each constituency includes all those who were, on January 1 of that year, qualified to exercise their voting rights within that constituency (Article 10).

Reviewing and updating of Voters Lists is carried out every two years and at least 6 months prior to the call for a general election (Article 12(a)). A voter may change his voting domicile for another legal domicile during a review or update period by submitting a written application to the election committee within the new voting domicile (Article 4(b)). Article 4(b) states, however, that ‘No committee shall have the right to register any voter on employment relocation grounds unless the voter has worked in the new domicile for at least 6 months from the date of submission of the application.’ Article 4(d) of the Election By-law requires an applicant to include evidence from the employer that the voter has been working in the new location for at least 6 months. It seems this requirement was included in the law to prevent relocations of government employees (including military and security forces) for partisan political reasons immediately prior to voter registration reviews and updates.

After the end of the registration process, committees notify the SCER of the names of voters registered following a change of domicile, and the SCER notifies the committees in the voters’ former constituencies so their names can be deleted from the Lists (Article 4(c)).

Except for presidential elections and public referenda (Article 5), Yemen’s election law requires a voter to ‘personally exercise his voting rights in the electoral constituency that is his voting domicile’ (Article 4(a)). This may require voters to travel to vote if they are absent from their constituencies on election day. In the case of parliamentary and local council elections, there are no provisions for advance voting or for absentee voting. In the case of presidential elections and referenda, however, Yemen’s election law provides (a) that a voter has the right to vote at any center on presentation of a photographic ID (Article 5);<sup>1</sup> and (b) for out-of-country voting at an embassy or consulate where there are at least 500 voters registered in the Voters Lists who hold Voter Cards (Article 6).

The SCER has advised that the numbers of voters currently registered for each type of voting domicile are as follows:

<b>voting domicile</b>	<b>number of registered voters</b>	<b>%</b>
place of residence	6,615,222	81.7
family address	1,028,528	12.7
place of work	453,770	5.6
Total	8,097,520	100.0

<sup>1</sup> IFES’ report on election law recommends that this provision should not be available when a presidential election or a referendum is combined with a parliamentary election or with local council elections (Recommendation 32).

### 3. Voting entitlements of members of Yemen's military and security forces

Although members of Yemen's military and police forces are banned from being members of any political party or organization,<sup>2</sup> they may register as voters and exercise their right to vote in any election or referendum.

Some countries disqualify military personnel from voting, for example Spain, Turkey, Brazil, Colombia, Dominican Republic, Ecuador, Honduras, Paraguay, Peru, Uruguay, Venezuela, Senegal, Chad, Tunisia, Morocco, Egypt, Lebanon, Jordan, Oman and Kuwait. The table in the next section shows some countries' provisions concerning the voting entitlements of their military and security forces.

### 4. Voting domiciles and the voting entitlements of military and security forces in some other countries

The following table shows residency requirements for voting and for military and security forces in some other countries:

Country	Voting domicile/s	Are members of the military and security forces entitled to vote?
Algeria	A citizen can be registered only at his or her place of residence. 'Residence' is not defined.	Yes. Military and security forces personnel can request to be registered either at their place of birth, or at their parents' place of residence
Australia	An eligible citizen registers at his 'real place of living', i.e. the place of living to which a person, when temporarily living elsewhere, has a fixed intention of returning for the purpose of continuing to live at that place'. There is a 1 month qualifying period. A person with no fixed address registers for his previous address, or where his or her next of kin are registered, or his or her birthplace in Australia, or for the constituency with which he or she has the closest connection.	Yes.
Canada	As a rule, electors must either be ordinarily resident (in Canada, Newfoundland, Labrador, and Ontario), or be a resident of their province or territory for a period of 6-12 months before polling day, or before the issuance of the writ. The place of ordinary residence of a person is the place that has always been, or that has been adopted as, his or her dwelling place, and to which the person intends to return when away from it.	Yes. They can vote at their unit's polling station only for a candidate running in his or her own 'riding' (constituency) which is determined by the address given on the statement of Ordinary Residence form.
Egypt	The law defines a voter's 'voting domicile' as his or her usual place of residence. However a voter may elect to register at his main place of work, or where he has a 'vested interest' or the residence of his family even if he does not reside there.	No. The law excludes all members of the military and police forces from exercising the right to vote while in service

<sup>2</sup> See Article (10) of the Parties and Political Organizations Law No. 66 for 1991 and Article (8) of the By-law. The same provisions apply to members of the judiciary, diplomatic and consular personnel serving abroad, the head and members of the SCER, and the appointed members of the Committee for the Affairs of Parties and Political Organizations.

Great Britain	An eligible voter registers at his or her residential address. Although 'residence' is not defined in law, the courts have held that it involves a 'considerable degree of permanence'. There is no qualifying period. The homeless, remand prisoners, and those in mental institutions register at an address provided in a 'declaration of local connection'.	Yes. Service personnel and their spouses in the UK register to vote in the normal way; those overseas register annually as 'service voters'.
Indonesia	An eligible voter is registered at his or her domicile address. A voter who has more than one domicile must decide which domicile will be listed in the voters register.	Yes.
Jordan	A resident is defined in Article 2 of the amended Elections Law for 2001 as any Jordanian who is an ordinary resident in the electoral constituency. Temporary absence from a place of ordinary residence does not cause a loss or change of place of ordinary residence, as long as the person has the right to return at any time (including Jordanians living abroad).  The election law allows any voter to submit a written request to the Civil Affairs Department to be registered in an electoral district other than that where he resides, along with supporting documents. This allows Jordanians to register where their tribes are located.	No. Members of the Jordanian armed forces, public security, and civil defense and intelligence services are not eligible to vote while in service.
Lebanon	The voters list for a constituency includes the names of those who have been ordinarily or actually residents of the constituency for at least 6 months before the beginning of the voter registration update.	No. Military and police forces, security forces and customs offices are not eligible to vote while in service.
Morocco	The 1997 law provides that a person must be a resident of the district for at least 3 months before applying to be registered as a voter. If public officials, local council officials, personnel of public/government corporations do not meet that condition, they and members of their families (and family members of the armed forces and public security personnel) can apply to be registered at the main place of work of the head of the household.	No. Members of the armed forces and public security personnel are not eligible to vote while in service.
New Zealand	An eligible person registers at the address at which he or she last resided for one month or more. The law says 'a person resides at the place where that person chooses to make his or her home by reason of family or personal relations, or for other domestic or personal reasons'. A person's residence does not change by reason only of occasional or temporary absences, e.g. for work or study.	Yes.
Oman	To be registered in the electoral rolls for any administrative district ( <i>wilaya</i> ), a person has either to be originally from the district or to reside in the district.	No. Members of the military or security forces are not allowed to exercise the right to vote until one year after their actual release from that force.

Tunisia	The law allows a citizen to be registered to vote at any of the following: place of birth; place of residence; place of work; place where a spouse resides. 'Residency' is not defined.	No.
United States	In most States, a person's residence or domicile for voting purposes is his or her 'true, fixed, permanent home'. Ordinarily, this is where the person actually resides. Where a person spends time in several different dwellings, other factors are considered in determining the person's true intent.	Yes. For voting purposes a service member's 'legal voting residence' can be the state or territory where he last resided prior to entering the military service, or the state or territory that he has since made his legal residence. A service member's legal residence does not change until the member acts to establish a new residence in the state or territory to which he is assigned, e.g. buying a home. Votes are cast using absentee ballots.

## 5. How should residency be determined?

A person's ordinary place of residence has been determined in most jurisdictions as the place where a person has his or her true, fixed, permanent place of abode and to which he or she intends to return despite temporary absences or temporary residences elsewhere. Fundamentally, however, residence is a matter of intent, and where the intent is not clear other factors such as ownership of property, banking arrangements, payment of taxes or the address given for receiving mail, may be considered to determine the person's true intent. Special provisions may apply to those who do not have a permanent address, as in Australia and Great Britain (see the table in the previous Section).

Once established, a person's legal residence for voting purposes remains the same until he or she establishes a new legal residence. Hence a person's legal residence does not change just because the person lives abroad, or moves to another area (e.g. for study or employment), or enters the armed forces and lives in another constituency pursuant to military orders.

Yemen's election law does not define 'usual place of residence', 'residence of his family', or 'main place of work', although all are key terms in the definition of 'voting domicile'. The following draft definition is provided for the purposes of discussion, although of course, a change to the election law would need to be drafted by professional law drafters.<sup>3</sup>

Voting domicile: either (a) a person's fixed, permanent place of residence in Yemen to which he intends to return despite temporary absences or temporary residences elsewhere (including those resulting from that person's employment), or (b) the fixed, permanent place of residence in Yemen of members of a person's family even if he does not reside there. If a person does not have a voting domicile under (a) or (b), that person's voting domicile shall be his place of residence on the day he applies for registration as a voter or applies for a change of voting domicile.

<sup>3</sup> Although the table in Section 4 shows that many jurisdictions register voters only for their residential addresses, the draft definition retains the family residence as a voting domicile because it seems many Yemenis want to be able to vote for a candidate from their village or tribe. If 'main place of work' is retained as a voting domicile, it will also need to be covered in the definition of 'voting domicile', e.g. 'or (c) the main place in Yemen where a person works. If a person does not have a voting domicile under (a) or (b) or (c),...'

## **6. Should there be voting facilities for voters who cannot go to their electoral centers?**

Many countries provide voting facilities for voters who cannot attend a polling place on election day and for those who are away from their electoral districts during an election (e.g. persons in hospitals, educational institutions and registered voters living abroad). These may include permitting voting before election day (e.g. at designated locations, by mail, or by using mobile voting stations), or allowing a voter to cast a vote on election day at a polling station outside his own district.

It would be difficult to provide general absentee voting facilities at Yemen's parliamentary or local council elections. Complex and costly administrative procedures would be needed to ensure that the facilities were provided only to those with a genuine need, to make the correct ballot papers available in different constituencies, and to send votes under secure conditions to the correct constituency for counting. They could also create risks to the integrity of the election, since it would be difficult to ensure monitoring by representatives of candidates and parties, to take effective measures to prevent multiple voting, and to enforce the law against those who abused the system.

As noted in Section 2, however, when a presidential election or referendum is held in Yemen, the law requires some out-of-country voting, and allows any voter to vote in the presidential election or referendum at any electoral center on election day. Where a referendum or presidential election is combined with parliamentary or local council elections, voters who cannot attend the electoral centers where they are registered to vote could be allowed to vote in the presidential election or referendum but not in the parliamentary or local council elections. Some of the logistical problems that would accompany allowing such voting at *any* electoral center would be lessened if it were allowed only at designated or special electoral centers which were publicized in advance, were equipped for the purpose, and had specially trained committees.

## **7. Options for Yemen concerning the workplace as a voting domicile**

The following options assume that the law will be amended to define the key terms concerning voting domiciles.

*Option 1: retain the main place of work as a voting domicile and ensure that the 6 month qualifying period is enforced*

### Advantages:

- no need to amend the election law
- promotes a higher level of voter registrations and participation in the election

### Disadvantages:

- allowing voters to choose between three different voting domicile addresses increases the risk of multiple registrations, which are difficult to detect
- allows suspicions that government employees or military personnel are relocated for partisan reasons
- it is not clear whether the requirement that a voter work in the new domicile for 6 months before applying for a change of registration following

relocation for work reasons will be adhered to and applied consistently by election committees

- since constituency boundaries are drawn on the basis of resident populations, within a strict  $\pm 5\%$  tolerance, permitting voters to register on the basis of several domicile addresses contributes to significant differences in the numbers of voters registered in different constituencies, thus undermining the principle of 'one vote, one value'

*Option 2: remove the main place of work as a voting domicile, and allow voters who are unable to go to the center where they are registered to vote for presidential elections and referendums at designated or special electoral centers, even when they are combined with parliamentary or local council elections*

Advantages:

- simplifies the law
- reduces ability to relocate voters for partisan reasons
- allows voters unable to attend their electoral center to participate in presidential elections and referendums

Disadvantages:

- need to re-register those who are currently registered at a job domicile
  - reduces participation in parliamentary and local council elections by voters unable to attend their electoral center
  - there will be cost, training and logistical issues in allowing voters to vote at designated centers if they are unable to attend their electoral center
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## IFES Yemen

## Law and By-Law Governing Parties and Political Organizations\*

Parties and Political Organizations Law No. (66) for 1991	Presidential Decree No. (109) 1995 pertaining to the Executive By-Law for the Parties and Political Organizations Law No. (66) for 1991
<p>In the name of the people, The Head of the Presidential Council, after having perused the Constitution of the Republic of Yemen and Declaration of the Republic of Yemen , and having been approved by the House of Representatives and the Presidential Council; we hereby issue the following legislation:</p> <p><b>Section One: Name and Definitions</b></p> <p><b>Article (1):</b> This Law is called “The Parties and Political Organizations Law”.</p> <p><b>Article (2):</b> The following words and expressions shall have the meanings given hereunder, unless the context dictates another meaning:  <b>REPUBLIC:</b> The Republic of Yemen  <b>CONSTITUTION:</b> The Constitution of the Republic of Yemen.  <b>PARTY or POLITICAL ORGANISATION:</b> Any group of Yemenis, organized according to common principles and objectives based on constitutional legitimacy, which undertakes political and democratic activities with the aim of achieving peaceful transfer of power or sharing thereof.  <b>COMMITTEE:</b> The Committee for the Affairs of Parties and Political Organizations established according to this Law.</p> <p><b>Section Two: Foundations, Objectives and General Principles</b></p> <p><b>Article (3):</b> According to Article (39) of the Constitution of the Republic of Yemen, general liberties including political pluralism and a party system based on constitutional legitimacy are considered a right and a pillar of the political and social system of the Republic of Yemen. This right may not be cancelled, limited or restrained, and no measure may be taken to hinder the freedom of citizens to exercise it. At the same time, no party or political organization may misuse this right contrary to the national interests and to the preservation of sovereignty, security, stability, and national unity.</p> <p><b>Article (4):</b> This Law aims to define the rules and procedures concerning the</p>	<p>The President of the Republic, After having perused the Constitution of the Republic of Yemen, and the Parties and Political Organizations Law No. (66) 1991, and in accordance with the recommendations made by the Chairman of the Committee for the Affairs of the Parties and Political Organizations; and having been approved by the Council of Ministers; We hereby decided:</p> <p><b>Section One: Name and Definitions</b></p> <p><b>Article (1):</b> This by-law is called “The Executive By-Law for the Parties and Political Organizations Law No. (66) for 1991”.</p> <p><b>Article (2):</b> The following words and expressions shall have the meanings given hereunder, unless the context or circumstances dictates another meaning:  <b>REPUBLIC:</b> The Republic of Yemen.  <b>CONSTITUTION:</b> The Constitution of the Republic of Yemen.  <b>PARTY LAW:</b> The Parties and Political Organizations Law No. (66) for 1991  <b>LAW:</b> Any applicable Law.  <b>BY-LAW:</b> The provisions of this By-Law.  <b>COMMITTEE:</b> The Committee for the Affairs of Parties and Political Organizations established according to Article (13) of the Party Law.  <b>PARTY or POLITICAL ORGANIZATION:</b> Any group of Yemenis, organized according to common principles and objectives based on constitutional legitimacy, which undertakes political and democratic activities with the aim of achieving peaceful transfer of power or sharing thereof.</p> <p><b>Section Two: Foundations, Objectives and General Principles</b></p> <p><b>Article (3):</b> Subject to the provisions of Article (3) of the Party Law, this By-Law aims to describe, explain and organize the rules and procedures concerning the right to form a political party and to enforce the law to accomplish its goals and objectives.</p>

\* Unofficial translations prepared by IFES Yemen, May 2005.

establishment and activities of parties and political organizations.

**Article (5):** All Yemenis are entitled to form parties and political organizations, and they have the right to voluntary affiliation with any party or political organization, in accordance with constitutional legitimacy and the provisions of this Law.

**Article (6):** A party or political organization shall carry out its activities by peaceful and democratic means in order to achieve a clearly defined and declared program relating to the political, economic, social and cultural affairs of the Republic, through participation in the political and democratic process, to ensure the peaceful transfer of power or sharing thereof through free and fair general elections.

**Article (7):** Parties and political organizations contribute towards the achievement of political, social, economic, and cultural progress and strengthening of national unity through democratic practices in accordance with the principles established by the constitution, considering that parties and political organizations are national, popular, and democratic political organizations which organize citizens and represent them politically.

**Article (8):** For the establishment or the continuation of the activities of any party or political organization, the following are the requirements:

**First:** That its principles, objectives, programs, and means do not contradict:

1. Islamic precepts and values.
2. The sovereignty, independence, and unity of the Republic and the people.
3. The Republican system, and the objectives and principles of the September and October Revolutions, and the Republic's Constitution.
4. The national unity of Yemeni society.
5. The basic freedoms and rights, and the international declarations on human rights.
6. The Yemeni society's affiliation to the Arab and Muslim nations.

**Second:** When applying for the establishment of a party or political organization, the programs and policies on which it depends to achieve its objectives in the political, economic, social and cultural fields, must not replicate those of other parties and political organizations.

**Third:** The applying party or political organization must have an internal system of regulations, by-laws, and a political program approved by its members.

**Fourth:** The party or political organization must not be established on a regional, tribal, sectarian, class, or professional basis, or on any other form of discrimination among citizens based on sex, racial origin, or color.

**Fifth:** The party or political organization may not be based on concepts contrary to Islamic law, and should not charge other parties or political organizations as infidels or atheists, or claim to be the only representative of the true Islam, or patriotism, or nationalism, or the Revolution.

**Sixth:** Parties and political organizations are prohibited from the following:

- (a) the establishment of a military or paramilitary force or helping to establish them;
- (b) the use of violence in any form, or threats or instigations thereof;
- (c) including in their literature, publications or programs anything that instigates violence

**Article (4):**

(a) All Yemenis are entitled to form parties and political organizations in the Republic in accordance with the Constitution and provisions of the Party Law. The establishment and the formation therein shall be according to the terms, conditions and procedures stipulated in the Party Law and this By- Law.

(b) All Yemenis are entitled to voluntary affiliation with any party or political organization, in accordance with constitutional legitimacy and the provisions of the Party Law and this By-Law.

**Article (5):** No Yemeni is entitled to be a member of more than one party or political organization.

**Article (6):** A party or political organization shall carry out its activities by peaceful and democratic means in order to achieve a clearly defined and declared program relating to the political, economic, social and cultural affairs of the Republic, through participation in the political and democratic process, to ensure the peaceful transfer of power or sharing thereof through free and fair general elections.

**Article (7):** Parties and political organizations contribute towards the achievement of political, social, economic, and cultural progress and strengthening of national unity through democratic practices in accordance with the principles established by the constitution, considering that parties and political organizations are national, popular, and democratic political organizations which organize citizens and represent them politically.

**Article (8):**

(a) According to the provisions of the Party Law and the applicable laws, affiliation with any party or political organization, and partaking or participating in political activities is prohibited for the following people:

1. All members of the judiciary.
2. All officers and soldiers of the military or security forces governed by the rules of employment for the military services and security forces.
3. All members of the diplomatic or consular services while serving abroad.
4. The Head and members of the Supreme Commission for Elections during their membership of the Commission.
5. The four members appointed to the Committee for the Affairs of Parties and Political Organizations mentioned in Article (13) of the Party Law.
6. All naturalized Yemenis, who have had their nationality for less than (15) years.
7. Any person against whom a court decision was issued depriving him of political participation.
8. Any person who is less than (18) years old.

(b) Any violation of the ban mentioned in clause (a) of this Article shall be considered an illegal act and the Public Prosecutor shall be responsible for filing a criminal case against the person who committed the violation. This shall not prevent the Committee from applying the procedures mentioned in Article (34) of the Party

<p>or the establishment of military or paramilitary structures, openly or in secret.</p> <p><b>Seventh:</b> A party or political organization may not be affiliated with any other party or political organization or a foreign country. Yemeni parties and political organizations may however, establish bilateral ties on an equal footing with any non-Yemeni party or political organization, in a manner that is not contrary to Yemen's supreme national interests, the Constitution or the applicable laws.</p> <p><b>Eighth:</b> The party or political organization must declare openly its principles, objectives, means, political structure and form, and leadership.</p> <p><b>Ninth:</b> The party or political organization must be organized nationally and may not limit membership to any geographic region.</p> <p><b>Article (9):</b> The by-laws and the political program of the party or political organization must include the principles regulating all its political, organizational, financial and administrative affairs, which may not contradict the provisions of this Law. In particular</p>	<p>Law against the political party or organization responsible for the breach or violation.</p> <p><b>Section Three: The Main Conditions for Establishing and Forming Parties and Political Organizations and for the Continuation of their Activities:</b></p> <p><b>Article (9):</b> For the establishment or the continuation of the activities of any party or political organization, the following are the requirements:</p> <p><b>First:</b> That its principles, objectives, programs, and means do not contradict:</p> <ul style="list-style-type: none"> <li>(a) Islamic precepts and values;</li> <li>(b) The sovereignty, independence, and unity of the country and the people.</li> <li>(c) The Republican system, and the objectives and principles of the September and October Revolutions, and the Republic's Constitution.</li> </ul>
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administrative affairs, which may not contradict the provisions of this Law. In particular, they must include:

- (a) The full name of the party or political organization which may not be similar to or replicate that of any other existing party or political organization.
- (b) The addresses of the headquarters of the party or political organization, and the branch offices, if any. All offices and branches must be located within the Republic of Yemen, and they may not be located in mosques, industrial and public service areas, military, educational or judicial sites, or in any other public property. The headquarters of the party or political organization must be in the capital city of Sana'a.
- (c) The principles and objectives of the party or political organization and the means and programs it will employ to achieve these objectives.
- (d) The membership conditions for the party or political organization, and the procedures for application, admission, withdrawal and expulsion. Conditions thereof must not be tailored with the intent of discriminating on the basis of sex, color, racial origin, language, profession, or social status.
- (e) The procedures for establishing or forming alliances with any party or political organization, for selecting its leaders, for carrying out its activities, and for the relationship among the members; also the procedures for specifying the political and financial duties and responsibilities of these alliances and leaders. All procedures must allow for the exercise of democratic rights within these alliances.
- (f) The financial structure of the party or political organization specifying its various resources, the banks with which the party or political organization deals, and the procedures governing withdrawal of funds; and information regarding book-keeping systems, auditing standards and the procedures for the annual budget preparation and approval.
- (g) The laws and procedures governing the party's or political organization's voluntary merger or dissolution, and how its assets are to be disposed of.

**Article (10):** To become a member of a party or a political organization, one must meet the following conditions:

1. Must be a Yemeni national. If he is a naturalized Yemeni, then the time requirement stipulated in the nationality law must apply.
2. Must be at least (18) years old.
3. Must be able to enjoy full political rights. Such rights can only be revoked by a court order.
4. Must not belong to the judiciary, police or military forces, or be assigned to a diplomatic mission outside Yemen.

**Article (11):** With due regard to clauses (3) and (4) of Article (10), the following conditions must apply to anyone who participates in founding a party or political organization:

- (a) Must be born of a Yemeni father.
- (b) Must be at least (24) years old.
- (c) A court decision against him must not have been issued depriving him of political activity or convicting him of a crime relating to honor or good conduct unless he is exonerated.

**Article (12):** The President of the party or political organization is the representative of the party or political organization in all matters related to its affairs before the judiciary or

October Revolutions, and the Republic's Constitution.

- (d) The national unity of Yemeni society.
- (e) The basic freedoms and rights, and the international declarations on human rights.
- (f) The Yemeni society's affiliation to the Arab and Muslim nations.

**Second:** When applying for the establishment of a party or political organization, the programs and policies on which it depends to achieve its objectives in the political, economic, social and cultural fields, must not replicate those of other parties and political organizations.

**Third:** The party or political organization must be established on a national basis and not a regional, tribal, sectarian, class, or professional basis, or on any other form of discrimination among citizens based on sex, racial origin, or color.

**Fourth:** The party or political organization may not be based on concepts contrary to Islamic law, and should not charge other parties, political organizations, society or individuals as infidels or atheists, or claim to be the only representative of the true Islam, or patriotism, or nationalism, or the Revolution.

**Fifth:** Parties and political organizations are prohibited from the following:

- (a) The establishment of a military or paramilitary force or helping to establish them;
- (b) The use of violence in any form, or threats or instigations thereof;
- (c) Including in their literature, publications or programs anything that instigates violence or the establishment of military or paramilitary structures, openly or in secret.
- (d) A party or political organization may not be affiliated with any other party or political organization or a foreign country. Yemeni parties and political organizations may however, establish bilateral ties on an equal footing with any non-Yemeni party or political organization, in a manner that is not contrary to Yemen's supreme national interests, the Constitution or the applicable laws.

**Sixth:** The party or political organization must declare openly its principles, objectives, means, political structure and form, and leadership.

**Seventh:** The by-laws and the political program of the party or political organization must be approved by the members when the application for establishment is submitted, and must include the principles regulating all its political, organizational, financial and administrative affairs, which may not contradict the provisions of the Party Law and this By-Law. In particular, they must include:

- (a) The full name of the party or political organization, which may not be similar to or replicate that of any other existing party or political organization in the Republic.
- (b) The addresses of the headquarters of the party or political organization, and the branch offices, if any. All offices and branches must be located within the Republic of Yemen, and they may not be located in mosques, industrial and public service areas, military, educational or judicial sites, or in any other public property. The headquarters of the party or political organization must be in the capital city of Sana'a.
- (c) The principles and objectives of the party or political organization and the means and programs it will employ to achieve these objectives.
- (d) The membership conditions for the party or political organization, and the procedures for application, admission, withdrawal and expulsion. Conditions thereof must not be tailored with the intent of discriminating on the basis of sex, color, racial origin, language, profession, or social status.





## Report on the electoral system and the ballot paper for the 2006 local council elections

The Supreme Commission for Elections and Referendum (SCER) has been examining a number of issues relating to the local council elections to be held in September 2006, and has asked IFES for advice on its options. This report responds to that request.

### 1. Introduction

Article 59 of the Local Authority Law No. 4 of 2000 sets the number of elected members of the council of an administrative district according to its population, as follows:

population of administrative district	number of members elected to local council	number of local councils (2002)
35,000 or less	18	134
35,000 to 75,000	20	109
75,000 to 150,000	26	71
more than 150,000	30	18

Prior to a change to the Local Authority Law in 2002, each member of a local council had to be elected from a single-member local electoral constituency. The law now says that each constituency is represented by 'one or more' elected members.<sup>1</sup> The General Elections and Referendum Law No. 13 (2001) does not state specifically the voting system to be used to elect those who represent multi-member constituencies; although the Block Vote system (described in Section 3.2 below) was used in multi-member constituencies at the last local council elections in 2001.

The SCER revised the boundaries of local electoral constituencies in 2002, using projected populations from the 1994 census. As a result, there are 5,620 local electoral constituencies, and 244 of the 332 administrative districts have at least one multi-member constituency. No information is available at the time of writing on the number of multi-member constituencies or on the numbers of members elected from them.

### 2. The issues

The SCER is facing significant administrative, financial and logistical issues in conducting the 2006 local council elections, particularly in relation to the following matters:

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<sup>1</sup> No consequential change was made to Article 24(b) of the election law to state that the requirement to have 'local electoral constituencies of equal population' with allowable deviations of  $\pm 5\%$  should now apply to 'equal population per elected member'. This amendment is recommended in IFES' report *Election Law Reform in Yemen: Final Report on the Public Policy Dialogues, January 2004 – January 2005*, (March 2005), note 24.

(a) Boundary delimitation

Article 146 of the Constitution requires the councils of administrative districts to be ‘freely and fairly elected’. Article 24(b) of the election law says the SCER is responsible for ‘Dividing each Administrative District into local electoral constituencies of equal population, and the Supreme Commission may when deemed necessary deviate by a margin of plus or minus 5%’. Article 78 of the election law says that members of local councils ‘shall be elected through secret, free, direct and equal voting’.

The SCER is, therefore, obliged to redraw the boundaries of the local electoral constituencies within each administrative district after each population census and before the next local council elections.

Annex 1 shows the changes in the numbers of elected members in administrative districts based on the preliminary results for the 2004 census and on the SCER’s projected populations for 2006.<sup>2</sup> It shows there would be increases or decreases in 53 of the 333 administrative districts.

The current law clearly obliges the SCER to review the constituency boundaries in an administrative district if new population figures result in a change in the number of elected members. It will also be necessary, however, for the SCER to examine the boundaries of local electoral constituencies in administrative districts that retain the same number of elected members to ensure that they comply with the  $\pm 5\%$  tolerance for their new census populations.

Because the SCER has not received the government funding and donor support it needs to use GIS technology for boundary delimitation, it will need to undertake a manual boundary delimitation process similar to the one it conducted in 2002. The SCER says that new boundaries will need to be completed by the end of March 2006. The following factors could affect the achievement of this deadline:<sup>3</sup>

- when the Central Statistics Organization makes the final population figures from the 2004 census available to the SCER;
- the extent to which the boundaries of the census enumeration areas used by the CSO coincide with the boundaries of the local electoral constituencies determined in 2002;
- whether a new boundary delimitation raises the same kinds of tribal issues that required a great deal of time and effort to resolve during the 2002 delimitation.

In addition, the SCER faced considerable difficulties in 2002 in complying with the present strict  $\pm 5\%$  population tolerance for local electoral constituencies, particularly when dealing with small population quotas and in areas with significant tribal issues. The SCER believes an increase to a population tolerance of  $\pm 20\%$  is necessary to give it the flexibility it needs to deal with the problems it faced in 2002 and to reduce the extent of the changes to the 2002 boundaries needed to comply with the statutory criteria following the 2004 census. A

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<sup>2</sup> Although the use of projected populations is not specified in the election law, projections based on the 1994 census were used in 2002. To project populations to 2006, the SCER applied a uniform increase to the populations of all administrative districts, although it would be preferable if projections were based on the actual rate of population change in each administrative district from 1994 to 2004.

<sup>3</sup> The Ministry of Local Administration has advised that the current administrative districts will not be restructured before the 2006 local council elections.

change to the population tolerance would require an amendment to Article 24(b) of the election law.<sup>4</sup>

In its report on amendments to the election law, IFES emphasized the need for an open and transparent boundary delimitation process, and recommended that the SCER should be required to take the following steps whenever it reviews boundaries for parliamentary and local constituencies:

- (i) make publicly available within each governorate its proposed boundaries for the constituencies within the governorate and the specific reasons for them in terms of the statutory criteria;
- (ii) give political parties, local councils, and any other person or organization the SCER considers appropriate, a reasonable opportunity to provide the SCER with comments on the manner in which the proposed boundaries comply with the statutory criteria;
- (iii) consider those comments before deciding the final boundaries;
- (iv) publish the final boundaries showing their compliance with the statutory criteria.<sup>5</sup>

IFES supports an increase to  $\pm 20\%$  in the population tolerance per elected member of local councils, *provided* the increase is accompanied by an open and transparent delimitation process which includes the steps stated above.

#### (b) The costs of Main Committees

The election law requires the local council elections to be conducted by a 3-member Main Committee in each of the 5,620 local electoral constituencies, assisted by male and female Sub-committees in each voting center (Articles 2(k), 2(l), 94(a)). Article 81 says that candidate applications are submitted to the Main Committee appointed by the SCER for the purpose. A separate ballot paper must be prepared for each local electoral constituency (Article 100(a)).

The SCER has estimated that the total cost of 5,620 Main Committees will be about 5 billion riyals (US\$26.3 million) for remuneration, stationery, security committees and transportation.

#### (c) Printing and distributing ballot papers

The ballot paper for each of the 5,620 local electoral constituencies cannot be prepared until the list of candidates is final. Under current law, the SCER has about 20 days between the finalization of nominations and Election Day to prepare, approve, print and distribute the correct ballot paper to each electoral center. This is a very short period for such a complex administrative and logistical task, and carries significant risks for perceptions of the integrity of the electoral process.

Dealing with the problems with local council elections outlined above involves considering the electoral system, and the design of the ballot paper. The next sections outline and comment on the options in each case.

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<sup>4</sup> A  $\pm 20\%$  delimitation population tolerance would be less than those used for federal parliamentary constituencies in Canada ( $\pm 25\%$ , and more in 'extraordinary circumstances'), and in Germany (also  $\pm 25\%$ ); see the Administration and Cost of Elections (ACE) project website [www.aceproject.org/main/english/bd/bdb05a.htm](http://www.aceproject.org/main/english/bd/bdb05a.htm)

<sup>5</sup> IFES, *Election Law Reform in Yemen: Final Report on the Public Policy Dialogues, January 2004 – January 2005*, Recommendation 15.

### 3. The electoral system for local council elections

The electoral system for local council elections depends on (1) whether the members of councils are elected to represent constituencies or are elected 'at large'; and (2) the voting system used to elect the members of councils.

#### 1. Whether the members are elected from constituencies or 'at large'

Option (a): members are elected from single-member or multi-member constituencies within an administrative district (the current system)

##### Advantages:

- ensures geographic representation and local accountability of elected members
- system is familiar to many Yemeni voters

##### Disadvantages:

- requires a large number of Main Committees and Sub-committees, at significant cost
- requires a large number of different ballot papers
- requires extensive boundary delimitation

Option (b): there are no constituencies within an administrative district and all members are elected 'at large' through voting at electoral centers within the district

##### Advantages:

- reduces the number of Main Committees from 5,620 to 333 and reduces costs to approximately 300 million riyals (about US\$1.6 million)
- there will be fewer different ballot papers
- no boundary delimitation is required

##### Disadvantages:

- significant losses of local representation and of local accountability of elected representatives
- likely to be big ballot papers, making it difficult for voters to cast votes
- it is more difficult for some candidates to file nominations at a single Main Committee in the administrative district
- women candidates will find it harder to compete at the wider district level rather than at the local constituency level

Option (c): members are elected from multi-member constituencies within an administrative district

This option uses multi-member local electoral constituencies within each administrative district. The SCER would draw the boundaries of the constituencies within each district according to existing population and other criteria, and on the basis of specified numbers of constituencies for each category of administrative district, for example:

no. of members to be elected	possible no. of constituencies	no. of administrative districts*
18	3 constituencies each electing 6 members	120
20	4 constituencies each electing 5 members	114
26	4 constituencies each electing 5 members, plus 1 constituency electing 6 members	71
30	5 constituencies each electing 6 members	28

\* based on the SCER's 2006 population projections

This pattern would result in a reduction from 5,620 constituencies to 1,311 constituencies, with voting conducted at electoral centers in each constituency in locations designated by the SCER. The SCER would, however, need some discretion to vary the number or membership of constituencies to deal with local conditions in some areas so that, for example, one 18-member council might have constituencies electing 5, 6 and 7 members whereas another might have constituencies electing 4, 7, and 7 members. In each case, the population per elected member would have to be within the tolerance set by the law.

Advantages:

- retains some geographic representation and local accountability
- more accessible Main Committees than Option (b)
- manageable ballot paper size
- easier for campaigning by women candidates than Option (b)

Disadvantages:

- requires boundary delimitation, which may raise tribal issues in some areas
- needs more Main Committees than Option (b).

## 2. The voting system used to elect members of councils

Option (a): First-Past-the-Post (FPP) in single-member and multi-member constituencies

General description:

In a single-member constituency, each voter has one vote and the winning candidate is the one who has more votes than any other candidate. In a multi-member constituency, the system is known as the Block Vote (BV); each voter can vote for candidates up to the number of seats to be filled, and the winning candidates are those who receive the most votes.

FPP in single-member districts is used for parliamentary elections in many countries, including India, USA, Great Britain, Canada, and Malaysia. BV is used in Bermuda, Laos, Thailand, the Maldives, Kuwait and Mauritius.<sup>6</sup>

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<sup>6</sup> These and later examples of the use of voting systems are as of 1997, and are taken from *The International IDEA Handbook of Election System Design*.

Advantages:

- simple system for voters to understand
- ensures geographic representation
- promotes accountability of elected representatives
- promotes stronger parties

Disadvantages:

- parties receive disproportionate shares of seats compared to shares of votes
- BV can result in a party winning all the seats in a constituency
- difficult for women and minorities to be elected

## Option (b): Single Non-Transferable Vote (SNTV)

General description:

- SNTV uses multi-member electoral constituencies; 7-9 seats is considered the highest manageable number of seats in a constituency in terms of the likely number of candidates and the size and complexity of the ballot paper;
- each voter only has 1 vote, irrespective of the number of seats to be filled;
- the winners in a constituency are the candidates with the most votes corresponding to the number of seats to be filled in that constituency;
- if N seats are to be filled in a constituency and V valid votes are cast, the number of votes a candidate needs to *guarantee* election is  $V/(N+1)$  plus one, but it is possible for a candidate to be elected with a very small number of votes.

SNTV was used in parliamentary elections in Japan from 1948 to 1993, and is now used in Jordan, Vanuatu, and (partially) in Taiwan. It will be used for the parliamentary elections in Afghanistan in September 2005.

Advantages:

- it is likely to result in some small party representation, and representation of Independent candidates
- it is simple to cast a vote and to count votes

Disadvantages:

- the number of seats a party wins depends heavily on its nomination strategy and on the discipline of its supporters, since (1) nominating too many candidates may result in winning fewer seats, whereas nominating too few candidates may mean the party wins fewer seats than could have been possible, and (2) parties want to spread their votes as evenly as possible among their candidates;
- the fairness of the election in a constituency may be questioned if a party wins more votes than another party but wins no seats or fewer seats than the other party, or if a candidate wins a seat with a very low level of support compared to other winning candidates in the same constituency;
- because small numbers of votes can affect the results, there are more incentives for fraud, intimidation, vote buying and vote stealing;
- may weaken parties, since candidates from the same party are competing against each other, especially through seeking personalized votes;

- there are no incentives for parties to appeal to voters from different tribes or social groups.

Option (c): Party list proportional representation within each administrative district (List PR)

General description:

In the simplest form of List PR, a party nominates a 'closed' list of candidates in an administrative district, in the order the party wants them elected.

Independent candidates may also be able to stand for election.

The ballot paper shows the names and symbols of the parties, and the names and symbols of Independent candidates if they are allowed. A voter marks a single party or a single Independent candidate. The number of votes needed for an Independent candidate to be elected is  $V/(1+N)$  plus one. Once any Independent candidates have been declared elected, the remaining seats are distributed among the parties according to their shares of the votes cast for political parties. In some countries, there is a qualifying 'threshold' for a party to be entitled to seats, e.g. a certain percentage of the votes. When the number of seats won by a party has been determined, the seats are filled by the highest ranked candidates on that party's list.

There are many different forms of List PR, depending on whether lists are nationally-based and are closed or 'open' (where voters can vote for individual candidates), whether there is a threshold, and the seat allocation formula. Among the countries using List PR are Algeria, Argentina, Denmark, Indonesia, Mozambique, Netherlands, Poland and Turkey.

Advantages:

- produces a proportional result
- simple to cast and count votes
- parties have incentives to appeal to voters throughout the district
- use of party lists is likely to result in more women being elected

Disadvantages:

- may not use geographic representation
- a more complex process for determining winners
- closed lists allow party leaders to control candidate selections
- more difficult for voters to understand

### 3. Conclusions:

- The financial and administrative gains from 'at large' local council elections do not justify the significant losses of local representation and local accountability of elected representatives. Hence the choice is between the current mixture of single-member and multi-member constituencies, and electing all members of local councils from multi-member constituencies within each administrative district.

The advantages and disadvantages of each system are outlined above. The key issue is whether the disadvantages of the current system outlined in Section 2 of this report are sufficient to justify a change (although the lack of information on the current pattern of

single-member and multi-member local electoral constituencies make it difficult to assess the degree of change that would be involved).

It should also be noted that if all members of local councils are to be elected from multi-member constituencies, amendments will be required to the Local Authority Law No. 4 (2000) and to the General Elections and Referendum Law No. 13 (2001).

- If members of local councils are elected from a combination of single-member and multi-member constituencies within each administrative district, SNTV has some advantages over FPP/BV. On the other hand, if all members of local councils are elected from multi-member constituencies, List PR has significant advantages over BV and SNTV. Amendments to the General Elections and Referendum Law will be required if there is a change to the voting system for local council elections.

#### **4. The design of the ballot paper for the 2006 local council elections**

Article 100(a) of the General Elections and Referendum Law No. 13 (2001) requires a ballot paper for a local council election to show the symbol of each candidate, arranged in chronological order of nomination. Ballot papers also normally show the name and affiliation of each candidate.

Because of the large number of different constituencies for elections to the local councils of administrative districts, and the short time period between the close of nominations and Election Day, the SCER faces significant administrative and logistical problems in preparing, verifying and printing the ballot papers and distributing them to the correct constituencies and voting centers. The SCER is therefore considering other methods of voting and ballot paper designs that will simplify the printing of ballot papers and may permit decentralization of printing and distribution, provided suitable security and monitoring arrangements can be made.

##### **(a) The SCER's proposal**

The SCER's proposed solution is as follows:

- (i) a poster is displayed in each screened polling booth that shows all the candidates for the constituency numbered in chronological order of nomination and, for each candidate, his or her name, party affiliation (if any) and symbol;
- (ii) the ballot paper shows the numbers of all the candidates in the constituency; and
- (iii) the voter marks the number/s of his or her preferred candidate/s on the ballot paper.

No examples have been found of other jurisdictions using a ballot paper in this format.

##### **(b) Comments**

The advantages of the SCER's proposal are as follows:

- it allows a simple ballot paper design;
- it permits decentralized printing of ballot papers, using templates for different total numbers of candidates in a constituency.

The disadvantages of the SCER's proposal are as follows:

- it requires a voter to match the number/s of his or her preferred candidate/s number on the wall poster with a number/s on the ballot paper;
- a large number of candidates in a constituency will make it more difficult for voters and will mean a large wall poster has to be printed and displayed;
- careful monitoring will be needed to ensure that the ballot paper for a constituency contains only as many numbers as there are candidates;
- candidates' numbers cannot be finalized, and ballot papers and posters printed and distributed, until the end of the candidate withdrawal period;
- a new ballot paper design and method of casting votes risks a higher rate of invalid votes;
- a different ballot paper design from presidential and governorate council elections requires an amendment to the election law (e.g. Article 100(a)) and a widespread and effective voter information campaign.

(c) Conclusion

The SCER's proposed ballot paper must prove to be satisfactory through a program of thorough testing of different ballot paper designs among a range of voters (urban/rural; young/old; male/female; literate/illiterate) under simulated voting conditions, including voting for presidential and governorate council elections.

If a different ballot paper is adopted, it will be essential to ensure that the SCER's voter information programs are effective in educating voters about the change, particularly those who might have problems in casting a valid vote using the new system. The SCER will also need to ensure that election committees assist in explaining the change to voters when issuing votes, and that committee members are trained accordingly.

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**Annex 1: Changes to numbers of elected members in administrative districts**

Governorate	no. of admin. districts	no. of admin. districts with multi-member constituencies (2002)	no. of admin. districts with no change to no. of members	changes to no. of members, 2002-2006, based on SCER's projected 2006 populations
Capital secretariat	10	10	6	-6, +4, +4, -6
Aden	8	7	5	-2, +6, +6
Taiz	23	15	20	+4, +4, +4
Lahj	15	9	15	—
Ibb	20	10	18	+4, -4
Abyan	11	6	10	+2
Al-Baidha'a	20	19	18	+2, -2
Shabwa	17	15	15	+2, +2
Al-Mahara	9	9	9	—
Hadhramout	30	27	28	-6, +4
Al-Hodeida	26	20	23	+6, +4, +6
Dhamar	12	4	10	+6, +1*
Sana'a <sup>#</sup>	16	8	14	-2, +6
Al-Mahweet	9	7	9	—
Hajjah	31	18	20	+2, +2, +2, +2, -2, -1*, +6, +6, +6, +2, +2
Sa'ada	15	14	13	+2, +2
Al-Jawf	12	9	9	+2, +6, +2
Marib	14	14	13	+2
Amran	20	14	17	+2, -2, +6
Al-Dale'a	9	7	6	+2, +2, +6
Rimah	6	4	2	-6, +6, -6, NA <sup>@</sup>
<b>Total</b>	<b>333</b>	<b>246</b>	<b>280</b>	<b>40 increases, 12 decreases, 1 NA</b>

\* Change results from correcting the number of constituencies assigned in 2002.

<sup>#</sup> Excluding the administrative districts that formed the new Rimah governorate.

<sup>@</sup> This is a new administrative district formed from the Sana'a governorate.